

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

CLIFTON RICHARD SKIDGEL,

Plaintiff,

v.

CIV NO. 06 -385 RB/ACT

KATHLEEN NESTOR, ZINAT SOBHANI,  
DON DOUGLAS and WESTFORD HEALTH  
SOURCES,

Defendants.

**REPORT AND RECOMMENDATION ON PLAINTIFF' S MOTION  
TO AMEND COMPLAINT**

THIS MATTER comes before the Court on Plaintiff's Motion to Amend his Complaint. [Doc. No. 29]. Plaintiff filed his original civil rights Complaint on May 5, 2006. [Doc. No. 1]. Count V and three Defendants, Brininstool, Sedillo, and McFadin were dismissed by an Order entered by the District Court Judge, Judge Robert Brack. Defendants Wexford Health Services, Nestor and Sobhani were served and answered. [Doc. Nos. 17, 20 and 22]. Defendant Douglas has not been served.

Fed. R. Civ. P. 15(a) allows a party to amend his pleading once before a responsive pleading has been served. But once the responsive pleading has been served the Plaintiff must obtain leave or permission of the Court before he may amend his Complaint. Id. Plaintiff has

requested two amendments to his Complaint:<sup>1</sup> 1) that the caption of the pleading be corrected to show the proper spelling of Wexford Health Sources (not “Westford” as it was spelled in the Complaint); and 2) that Plaintiff be allowed to add an additional claim of abuse. Plaintiff writes, “The Geriatric Care Center is deplorable and shocking.”.

The Magistrate Judge finds that the correct name of the Defendant Westford/Wexford Health Sources is Wexford Health Sources and recommends that the Motion be GRANTED as to that proposed amendment. However, the Magistrate Judge recommends that Plaintiff’s second proposed amendment, that he be allowed to amend the Complaint to add a new allegation of abuse, be DENIED.

Fed. R. Civ. P. 15(a) states that leave shall be freely given to amend a pleading “when justice so requires.” But when an amendment to a pleading will unduly prejudice a party or if the issues sought to be raised in the amendment are remote from the other claims in the lawsuit, then the Court, may in its discretion, deny the amendment. See, Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 1487.

Plaintiff seeks to add a completely new claim of abuse that has no relation to the claims asserted in his Complaint. The new claim would add completely new defendants. The alleged “deplorable and shocking conditions in the Geriatric Care Center” involve a different facility (Los Lunas) from the one in which the events Plaintiff complains of in his original Complaint took place (LCCF). The alleged abuse has no connection in time, place or event to the claims brought

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<sup>1</sup> While Plaintiff’s pleading is captioned “Motion to Amend and Correct Complaint” it, in fact, asks for other relief such as having Defendant Wexford Health Sources provide the “whereabouts information” on Defendant Don Douglas so that Plaintiff can serve him. Plaintiff also asks for an abeyance of this case. Neither request has anything to do with a Motion to Amend the Complaint and will not be addressed by the Court.

in the original Complaint. Moreover, the Plaintiff states in his pleading that he “has initiated [sic] other litigation on the living conditions which Wexford is a party to.” While Plaintiff does not inform the Court of any more details involving this new litigation, the Court is led to believe that the new litigation involves the Geriatric Care Center at Los Lunas since Plaintiff refers to his living conditions and Plaintiff is currently residing there.

Therefore, the Court finds that the proposed amendment to the Complaint would unduly complicate and prolong this civil rights lawsuit if Plaintiff were allowed to add a cause of action concerning the living conditions of another correctional facility. The Court further finds that it would prejudice the current Defendants in this case to prolong and complicate this lawsuit.

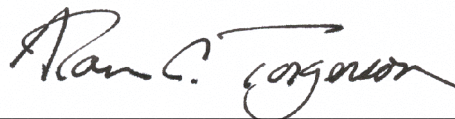
#### RECOMMENDATION

The Court RECOMMENDS that the District Court Judge GRANT the Motion to Amend the Complaint to allow the correct name of Defendant Wexford Health Sources to be reflected on the caption but DENY the Motion to amend the Complaint to add an additional cause of action involving the Geriatric Care Center at the Los Lunas Correctional Facility.

#### NOTIFICATION

THE PARTIES ARE NOTIFIED THAT WITHIN 10 DAYS OF SERVICE of a copy of this Report and Recommended Disposition, they may file written objections with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102, pursuant to 28 U.S.C. §636 (b)(1). A party must file any objections within the ten (10) day period allowed if that party wants to have appellate review of the proposed findings and recommendations. If no

objections are filed, no appellate review will be allowed.

A handwritten signature in black ink, reading "Alan C. Torgerson". The signature is written in a cursive, flowing style. The first name "Alan" is written with a large, prominent "A". The middle initial "C." is written in a smaller, more compact script. The last name "Torgerson" is written with a large, sweeping "T" and a long, horizontal stroke extending from the end of the word.

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ALAN C. TORGERSON  
UNITED STATES MAGISTRATE JUDGE